THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12441 of 1997

ORAL ORDER:

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This writ petition is filed seeking a Mandamus declaring the Office Order issued by the first respondent in File No.E.II/30/(15)/88 dated 16.4.1997 as arbitrary and illegal.

According to the petitioner, he was initially appointed as Watchman on 11.10.1976 in the office of Joint Manager (Operation), Food Corporation of India, Visakhapatnam on daily wage basis. Subsequently, he was transferred to the administrative control of the District Manger, Food Corporation of India, Visakhapatnam with effect from 3.12.1976 and appointed on regular basis on the timescale of pay with retrospective effect from 11.10.1976 on the terms and conditions specified under Regulation 7(3) of the F.C.I. Staff Regulations, 1971. The services of the petitioner in the post of Watchman were also confirmed with effect from 11.10.1997. According to the petitioner, he passed Matriculation examination from Andhra University, Waltair held in the month of October, 1980 and that fact was intimated to the Corporation authorities along with a copy of certificate for making entry of the same in his service record. The mode of recruitment to the post of Assistant Grade-III is 70% by direct recruitment and 30% by promotion from Matriculate Category IV employees with three years experience. The post of Assistant Grade-III is a non-selection post. Thus, the petitioner is fully eligible for being promoted to the post of Assistant Grade-III even in 30% promotion quota. Vide order dated 31.12.1983, petitioner was promoted as Assistant Grade-III along with other 170 candidates and he reported to duty in the forenoon of 31.12.1983 and he was placed on probation for a period of one year. The period of probation ended on 31.12.1984 and no proceedings were issued extending the period of probation at any time. Therefore, it must be deemed that the petitioner had completed the probation on 31.12.1984. Further when the zonal office required the caste certificate of the petitioner for the purpose of verification, he submitted his 9th Class original Transfer Certificate issued

by the Zilla Parishad High School, Parwada on 4.3.1987, whereunder it was clearly indicated that the petitioner belongs to 'Kshatriya' community. But strangely, the first respondent vide order dated 21.12.1987 after lapse of four years, cancelled the promotion order of the petitioner on the ground that he neither belong to Scheduled Caste nor Scheduled Tribe category and the petitioner was reverted to the post of Watchman with immediate effect. The grievance of the petitioner is that the office order dated 31.12.1983 does not indicate that he was promoted in reservation quota and he did not produce any caste certificate showing that he belongs to Scheduled Community, therefore, question of promoting him under Scheduled Tribe quota does not arise. Even otherwise, as per FCI (Staff) Regulations, 1971, the post of Assistant Grade-III (Depot) is a non-selection post and the mode of recruitment to the said post is 70% by direct recruitment and 30% by promotion from among matriculate category-IV employees with three years experience. There is no reservation for Scheduled Castes and Scheduled Tribe candidates under 30% promotion quota. Therefore, petitioner filed W.P.No.206 of 1988 before this Court and this Court while disposing of the writ petition held that though there is a mistake committed on the part of the respondents, they are directed to rectify the mistake in any other manner, but not by demoting the petitioner to the lower category. Thereafter, the present impugned order has been passed for recovering the excess amounts paid to the petitioner. According to the petitioner, the respondents having upheld the promotion, now cannot recover the amounts till he is promoted on regular basis. If the respondents are allowed to recover the dues from his salary, he would be put to great hardship.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. It is stated that in obedience to the order of this Court, the respondent Corporation has not disturbed the position of the petitioner in Assistant Grade-III category and petitioner will continue as Assistant Grade-III (D) till he gets promotion as per his turn. This Court indicated that there is a mistake committed by the respondents and they are directed to rectify the mistake in any other manner, but not demoting the

petitioner to the lower category. Therefore, in the guise of rectifying the mistake committed by them, the respondents have passed the impugned order. I am of the considered opinion that the respondents would not have passed such an order of recovery putting the petitioner to basic scale applicable to Grade-III, which amounts to denying equal pay for equal work.

Therefore, the impugned order is set aside and the respondents are directed to consider the seniority of the petitioner in the cadre of Assistant Grade-III for the purpose of future promotions etc., from the date of his entitlement in the cadre of Assistant Grade-III along with others.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU, J

Date: 29.3.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12441 of 1997

29.3.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12441 of 1997

Date: 29th March, 2007

Between:

P.S.K.Rivat Sinha

.. Petitioner

And

The Zonal Manager,
Food Corporation of India,
No.2, Haddows Road, Madras & another.

.. Respondents